**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**APPEAL FROM ORDER No. 249 of 2006**
**With**
**CIVIL APPLICATION No. 10663 of 2006**
**In**
**APPEAL FROM ORDER No. 249 of 2006**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE P.B.MAJMUDAR**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**OMPRAKASH PARASRAM NAVANI AND ANOTHER**
**Versus**
**SHRI RAJU BULCHAND SHARMA AND OTHERS**

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**Appearance :**
MRS KETTY A MEHTA for Appellants.
MR DC DAVE for Respondent Nos.1 - 2.
RULE SERVED for Respondent No.3.

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**CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR**

**Date : 08/03/2007**

**ORAL JUDGMENT**

1) Heard the learned advocates for the parties.

2) This appeal is preferred against an interim order of the trial Court by which the defendants are ordered to maintain status quo with regard to the suit property till the final disposal of the suit.

3) The appellants herein are the original defendants no.3 and 4 against whom as well as against respondent no.2 and 3 herein, respondent no.1 has instituted a suit being Special Civil Suit No.45/2005. Aforesaid suit is filed by respondent no.1 for specific performance of the contract and permanent injunction. In the aforesaid suit, it is the case of the plaintiff that the plaintiff is a permanent resident of Adipur town and defendant no.1 is a resident of Pune and defendant no.2, i.e., Sindhu Resettlement Corporation is a body registered under the Companies Act. According to the plaintiff, said Corporation has been incorporated for the purpose of establishing a new township for rehabilitating Sindhi Hindu Refugees migrated from the area of the then West Pakistan to India. Said Corporation has been allotted 2600 Acres of land near Kandla Port Trust for the aforesaid purpose on 99 years lease basis and said Corporation is authorized to construct houses and buildings and sell the same to the share holders and the said Corporation was also authorized to grant lease of the plots to the shareholders. It is also the case of the plaintiff that defendant no.1-Smt.Bhagwanti Lachmandas Narang is one of the shareholder of defendant no.2 and she agreed to sell the share certificates and sub-leased the plot of land bearing no.322 in Ward No.2-B and plot No.290 in Ward No.6-C situated at Adipur-Kachchh with all her rights, title and interest to the plaintiff for Rs.7,50,000/- and an agreement was entered into on 5-4-2005. At the time of executing the sale agreement, defendant no.1 handed over actual possession of the suit plot to the plaintiff. Defendant no.1 signed and executed general power of attorney in favour of her attorney Shri Yajuvendrasinh Jadeja. It is also the case of the plaintiff that all

necessary papers and documents are already submitted in the office of defendant no.2 and that the plaintiff was ready and willing to perform his part of the contract and that defendant no.2 is bound to do the needful for completing the said contract. Aforesaid suit is filed for specific performance of contract, also with a prayer to proceed in the matter of obtaining prior permission of Kandla Port Trust for giving effect to said transaction.

4) In the said suit, the plaintiff also submitted an application for interim injunction with a prayer to restrain defendants no.1 and 2 from interfering with the possession of the plaintiff and also from transferring or selling the disputed property.

5) In the aforesaid suit, subsequently present appellants submitted an application for joining them as party and they were joined as defendants no.3 and 4 in the suit.

6) After hearing the concerned parties, learned trial Judge has allowed Exh.5 application submitted by the plaintiff and the defendants are ordered to maintain status quo in connection with suit property till the final disposal of the suit.

7) The appellants, who are the original defendants no.3 and 4 in the suit have challenged the aforesaid order by filing this Appeal from Order.

8) Mrs.Ketty Mehta, learned advocate for the appellant submitted that original owner, namely, Bhagwantiben had already assigned her rights in favour of present appellants and, therefore, injunction could not have been granted in favour of the original plaintiff. It is also submitted by her that suit of the plaintiff for specific performance is not

maintainable.

9) Mr.D.C.Dave, learned advocate for the respondents submitted that the trial Court has rightly found that the plaintiff has got prima facie case. He also submitted that earlier defendants no.3 and 4 have already filed a suit against defendant no.1 and that suit was subsequently withdrawn unconditionally and, therefore, rights of the said defendants cannot be decided in the suit of the plaintiff in any manner.

10) I have heard both the learned advocates and I have also gone through the voluminous documentary evidence produced on record as well as the order of the trial Court. Learned trial Judge has found that defendant no.1, who is the real owner of the property has accepted the say of the plaintiff. Learned trial Judge found that defendants no.3 and 4 have not yet got title in their favour and, therefore, in order to avoid multiplicity of proceedings, order of status quo is granted.

11) It is required to be noted that whether original owner, i.e., defendant no.1 has assigned her rights in favour of defendants no.3 and 4 is a question, which can be decided only at the time of trial. Considering the facts and circumstances of the case, in my view, at this stage, it would be just and proper to direct the defendants to maintain status quo as the rights of defendants no.3 and 4 are not yet finalized nor Mrs.Ketty Mehta is in a position to submit as to how the order of status quo is required to be interfered with by this Court, which is granted by trial Court while deciding interim injunction application. Considering the nature of controversy, it would be just and proper not to interfere with the order directing the defendants to maintain status quo. In that view of the matter, discretionary order passed by the trial Court is not required to be interfered with by this Court.

12) It is request by both the learned advocates that in order to see that dispute is put to an end at the earliest, direction to expedite the suit may be granted.

13) Since it is jointly requested by both the learned advocates to expedite the suit and in order to see that the dispute is put to an end at the earliest, learned trial Judge may try to dispose of the suit expeditiously and if possible by the end of December, 2007.

14) Subject to aforesaid direction to expedite the suit, this Appeal from Order is dismissed with no order as to costs.

15) In view of above order on main appeal, no order on Civil Application No.10663/2006.

(P.B.Majmudar, J.)

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